

TITLE 39  
HEALTH AND SAFETY  
CHAPTER 72  
IDAHO LAND REMEDIATION ACT

39-7201.      **SHORT TITLE.** This chapter may be known and cited as the "Idaho Land Remediation Act."

39-7202.      **LEGISLATIVE FINDINGS.** The legislature hereby finds and declares: (1) That it is the policy of the state of Idaho to provide for the protection of the public health, welfare, safety, and environment; and to foster the remediation, transfer, reuse, or redevelopment of sites or groups of sites based on the risk to human health and the environment where releases or threatened release of hazardous substances or petroleum exists. The minimization of risk to public health and the environment on a commercial and industrial site offers significant potential economic benefit to local communities and is vital to their use and reuse as sources of employment, housing, recreation and open-space areas. (2) That establishing a voluntary program for the remediation of hazardous substance or petroleum contaminated sites will encourage innovation and cooperation between the state, local communities, and interested persons and will promote the economic revitalization of property. It is intended that this program will provide for an expedited remediation process by eliminating the need for many adversarial enforcement actions and delays in remediation plan approvals.

39-7203.      **GENERAL DEFINITIONS.** As used in this chapter: (1) "Board" means the board of environmental quality. (2) "Department" means the department of environmental quality. (3) "Hazardous substance" has the meaning set forth in section 101(14) of the comprehensive environmental, response, compensation and liability act (CERCLA), 42 U.S.C. 9601 (14) as amended. (4) "Person" means any individual, association, partnership, firm, joint stock company, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any other legal entity which is recognized by law as the subject of rights and duties. (5) "Petroleum" includes petroleum asphalt and crude oil or any part of petroleum asphalt or crude oil that is liquid at standard conditions of temperature and pressure (sixty (60) degrees Fahrenheit and fourteen and seven-tenths (14.7) pounds per square inch absolute). (6) "Release" means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discarding of barrels, containers, or other closed receptacles containing any hazardous substance or petroleum. (7) "Remediation" means any of the following: (a) Actions necessary to prevent, minimize, or mitigate damages to the public health or welfare or to the environment, which may otherwise result from a release or threat of a release; or (b) Actions consistent with a permanent remedy taken instead of, or in addition to, removal actions in the event of a release or threatened release of a hazardous substance or petroleum into the environment to eliminate the release of hazardous substances or petroleum so that the hazardous substances or petroleum do not migrate to cause substantial danger to present or future public health or welfare or the environment; or (c) The cleanup or removal of released hazardous substances or petroleum from the environment. (8) "Site" means a parcel of real estate for which an application has been submitted under section 39-7204, Idaho Code.

39-7204. PARTICIPATION. (1) To participate in the remediation program a person must submit an application to the department as described under subsection (2) of this section. (2) An application submitted under this section must meet the following conditions: (a) Contain the following general information concerning: (i) the person, (ii) the site, and (iii) other background information as requested by the department; (b) An environmental assessment that conforms to ASTM Standard Practice E 1527, as amended, or equivalent. (3) Not more than thirty (30) days after receiving an application under subsection (2) of this section, the department shall determine if the person is eligible to participate in the remediation program under this chapter. (4) The department may reject an application submitted under subsection (2) of this section for any of the following reasons: (a) Remediation is required pursuant to sections 39-101 through 39-129, sections 39-4401 through 39-4432, or sections 39-7401 through 39-7420, Idaho Code, or rules promulgated thereunder, or other applicable statutory or common law; or (b) The condition of the hazardous substance or petroleum described in the application constitutes an imminent and substantial threat to human health or the environment; or (c) The application is not complete. (5) If the application is rejected under subsection (4)(c) of this section, the department shall provide the person with a list of all information needed to make the application complete. If the department fails to comply with this subsection, the application shall be considered completed for the purposes of this chapter. (6) If the department rejects an application, the department shall do the following: (a) Notify the person that the department rejected the application; (b) Explain the reason the department rejected the application.

39-7205. WORK PLANS. (1) If the department determines an application is eligible under this chapter, the person may submit a proposed voluntary remediation work plan to the department. Before the department evaluates a proposed voluntary remediation work plan, the person who submitted the work plan and the department must enter into a voluntary remediation agreement that sets forth the terms and conditions of the evaluation and the implementation of the work plan. (a) A voluntary remediation agreement must include the following: (i) An estimation of costs the department may incur under this chapter; (ii) A payment schedule of all reasonable costs estimated to be incurred by the department in the review and oversight of the work plan; (iii) A provision for the department's oversight including access to site and pertinent site records; (iv) A timetable for the department to do the following: 1. reasonably review and evaluate the adequacy of the work plan, or 2. make a determination concerning the approval or rejection of the work plan; (v) A provision to modify the voluntary remediation agreement and voluntary remediation work plan based upon unanticipated site conditions; (vi) Any other conditions considered necessary by the department or the person concerning the effective and efficient implementation of this chapter. (b) A proposed voluntary remediation work plan must include a proposed statement of work and schedule to accomplish the remediation in accordance with rules established by the board. (2) If a voluntary remediation agreement is not reached between a person and the department within a reasonable time after good faith negotiations have begun, the person or the department may withdraw from the negotiations.

39-7206. EVALUATION AND REVIEW RESPONSIBILITIES. (1) Pursuant to the signed voluntary remediation agreement, the department or a person under contract with the department shall do the following:

- (a) Review and evaluate the site and the affected area surrounding the site;
  - (b) Review and evaluate the proposed voluntary remediation work plan for protection of public health and the environment based on rules promulgated by the board.
- (2) At any time during the evaluation of a proposed voluntary remediation work plan, the department may request that a person submit additional or corrected information to the department. A person may:

- (a) Comply with the request; or
- (b) Withdraw the person's proposed voluntary remediation work plan from consideration and terminate the voluntary remediation agreement.

(3) Before the department approves a proposed voluntary remediation work plan under this section, the department must:

- (a) Notify local government units located in a county affected by the proposed voluntary remediation work plan of the work plan; and,
- (b) Provide that a copy of the proposed voluntary remediation work plan and a copy of the voluntary remediation agreement be placed in at least one (1) public library in a county affected by the work plan; and,
- (c) Notify by reasonable public notice potentially affected persons to request comments concerning the proposed voluntary remediation work plan; and,
- (d) Provide a comment period of at least thirty (30) days following publication of a notice under this section. During the comment period, interested potentially affected persons may do the following:

- (i) submit written comments to the department concerning the proposed voluntary remediation work plan,
- (ii) request a public hearing concerning the proposed voluntary remediation work plan.

(4) If the department receives a significant number of written requests from potentially affected persons, the department may hold a public hearing in the geographical area affected by the proposed voluntary remediation work plan on the question of whether to modify, approve or reject the work plan. All written comments and public testimony shall be considered by the department.

(5) The department shall:

- (a) Approve;
- (b) Modify and approve; or
- (c) Reject the proposed voluntary remediation work plan.

(6) If the department rejects a proposed voluntary remediation work plan under this section:

- (a) The department shall notify the person and specify the reasons for rejecting the work plan; and

- (b) The person may appeal the department's decision under chapter 52, title 67, Idaho Code.

(7) If the department approves, or modifies and approves, a proposed voluntary remediation work plan under this section, the department shall:

- (a) Notify the person in writing, under the applicable provisions set forth in this chapter, that the voluntary remediation work plan has been approved, or modified and approved;
- (b) Incorporate the approved voluntary remediation work plan into the voluntary remediation agreement.

39-7207. COVENANT NOT TO SUE. (1) If the department determines that a person has successfully completed a voluntary remediation work plan approved under this chapter, the department shall certify that the work plan has been successfully implemented or satisfied by issuing the person a certificate of completion. The issuance of a certificate of completion under this section is a final agency action for purposes of this chapter. (2) A person who receives a certificate of completion under this section shall record a copy of the certificate of completion with the deed for the site on which the remediation took place. (3) If the department determines that the person has not successfully implemented a voluntary remediation work plan approved under this chapter, the department shall notify the person of this determination under this chapter. (4) If the department issues a certificate of completion to a person under this chapter, the department, upon request, shall also negotiate and provide the person a covenant not to sue for any claim for environmental remediation under state law resulting from or based upon the release or threatened release of a hazardous substance or petroleum that is the subject of the approved voluntary remediation work plan successfully implemented under this chapter. The covenant not to sue shall extend to any current or future owner or operator of the site or portion thereof who did not cause, aggravate, or contribute to the release or threatened release. (5) A covenant not to sue issued under this section shall not apply to claims for a condition or the extent of a condition that: (a) Was present on the site involved in an approved and implemented voluntary remediation work plan; and (b) Was not known to the department at the time the department issued the certificate of completion under this chapter. (6) Except as provided under federal law or agreed to by a federal governmental entity, a covenant not to sue issued under this section shall not release a person from liability to the federal government for claims based on federal law. (7) During the implementation of an approved voluntary remediation work plan, the department shall not bring an action, including an administrative or judicial action for any liability for remediation relating to the release or threatened release of a hazardous substance or petroleum that is the subject of the voluntary remediation work plan, against a person who entered into a voluntary remediation agreement and who is implementing the voluntary remediation work plan in accordance with such agreement implementing the voluntary remediation work plan.

39-7208. RECISION. (1) This chapter does not prohibit or limit the department's recision of the voluntary remediation agreement or the covenant not to sue at any time if: (a) The person implementing the work plan fails substantially to comply with the terms and conditions of: (i) a voluntary remediation agreement, or (ii) covenant not to sue; (b) A hazardous substance or petroleum release becomes an imminent and substantial threat to human health or the environment. (2) The department shall also notify the county in which the said site exists of recision of the covenant not to sue for the purposes of determining property exemptions provided under section 63-602BB, Idaho Code.

39-7209.       LENDER LIABILITY. Pursuant to rules adopted by the board, a person who maintains indicia of ownership primarily to protect a security interest in a site, and who does not participate in the management of the site, shall not be considered an owner or operator of that site, nor liable under any pollution control or other environmental protection law, rule or regulation, or otherwise responsible for any environmental contamination or response activity costs consistent with United States environmental protection agency policy, 60 Federal Register 63517, dated December 11, 1995, as amended. This section shall apply to all indicia of ownership existing at the time of passage of this chapter and those arising thereafter.

39-7210.       RULES. Within one (1) year after the effective date of this section, the board shall, through negotiated rulemaking, adopt rules to carry out the purposes of this provision consistent with federal and state law which shall provide for the following: (1) The establishment of methodologies to determine site-specific risk-based remediation standards, which shall be no more stringent than applicable or appropriate relevant federal and state standards and are consistent with 42 U.S.C. 9621, taking into consideration scientific information regarding the following: (a) protection of public health and the environment, (b) the future industrial, commercial, residential, or other use of the site to be remediated and of surrounding properties, (c) the availability of institutional or engineering controls that are protective of public health and the environment, including deed restrictions, and (d) natural background levels for hazardous constituents; (2) The establishment of administrative procedures that minimize delay and expense of the remediation, processing submissions and overseeing remediation; (3) The issuance of certificates of completion once the voluntary remediation work plans is [are] implemented; (4) Consistent with applicable local, state and federal law, guidelines to assist in the issuance of any permits required to initiate and complete a voluntary remediation work plan; (5) Collection and payment of fees to defray the actual reasonable costs of the voluntary remediation program.[;] (6) Lender liability consistent with United States environmental protection agency policy, 60 Federal Register 63517, dated December 11, 1995, as amended.